



**Pacific Gas and
Electric Company**

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June 17, 2005

**VIA EXPRESS MAIL
AND EMAIL**

Docket Office
California Energy Commission
Attn: Docket 04-IEP-01-D
1516 Ninth Street, MS-4
Sacramento, CA 95814-5512

Re: Pacific Gas and Electric Company's Appeal of Executive Director's Notice of Intent to
Release Aggregated Data - Docket No. 04-IEP-01-D

Dear Docket Office:

On June 3, 2005, the Acting Executive Director issue a "Notice of Intent To Release Aggregated Data," (NOI) containing three proposals to release to the public confidential data on an aggregated basis that Pacific Gas and Electric Company (PG&E) and other California investor-owned utilities have previously provided in this Docket. For the reasons stated below and in previous filings in this docket, PG&E hereby objects to the release of this confidential data as part of the CEC's *2005 Energy Report* proceeding as proposed by the Acting Executive Director, and appeals the NOI to the full Commission.

Given the importance of the issues raised by this appeal, PG&E requests that the Commission hold evidentiary hearings on this appeal and obtain comments and expert testimony from a wide range of witnesses, including PG&E witnesses, regarding the potential and probable impacts of the release of this confidential information on California energy markets and the ability of PG&E and other utilities to procure reliable and reasonably priced energy and capacity for their customers without risk of market manipulation or gaming of the procurement process.^{1/}

The NOI discusses six sets of data tables that the CEC intends to include in its 2005 Energy Report, including annual and quarterly energy and capacity tables for the period 2009-2016 with near-term data (2006-2008) held confidentially. The tables would present three levels of data aggregation: utility-specific capacity and energy (broad resource groupings only, no aggregation

^{1/} PG&E notes that the NOI contains no evidence, expert or otherwise, to support a conclusion that the level of aggregation proposed in the NOI will not adversely affect the ability of PG&E and other utilities to procure power at the lowest reasonable price without risk of market manipulation or gaming. In the absence of such evidence, the NOI does not demonstrate that release of this information is in the public interest.



with other entities); planning area capacity and energy (PG&E, several municipal entities and ESPs); and planning area capacity tables presenting a high-low data range for all four CEC-defined scenarios.

PG&E concurs with the Acting Executive Director that this information is necessary for the CEC staff to determine that utilities and Load Serving Entities (LSEs) have sufficient resources or plans to ensure they will meet future energy requirements. However, PG&E strongly disagrees with the Acting Executive Director that all of this information should or need be made publicly available in order to achieve these public policy goals. Further, the public release of this information will harm PG&E and its customers by inappropriately providing sensitive market information to energy suppliers and generators who may use the information to manipulate the prices and terms and conditions of PG&E's electricity procurement contracts and ongoing procurement initiatives.^{2/}

The following summarizes PG&E's specific comments and objections to the NOI proposals, beginning with the proposed annual data tables followed by a discussion of the proposed quarterly tables.

Annual Data Tables

The CEC staff has proposed the release of 2009-2016 information on demand and supply resources on an annual aggregate basis. PG&E believes publicizing this information at a regional planning area level, or presenting of a range of potential utility requirements, is appropriate to meet the CEC and CPUC requirements of the 2005 Energy Report. PG&E strongly objects to the CEC's intent to publicly release what is highly sensitive competitive market and trade secret information as identified in the NOI's Proposal 1 – IOU Bundled Customer Data.

In any competitive market, participants and suppliers would always like to know their competitors' and customers' business plans. The public release of individual utility bundled customer peak demand and sales, existing resource attrition, and expected utility procurement effectively provide competitors a utility's long-term business plan and strategy. PG&E sees no possible benefit to its ratepayers or shareholders by publicizing its business plans and trade secrets. Instead, release of this information would undermine PG&E's negotiating position in its current and future procurement activities because it simply provides potential suppliers with

^{2/} To the extent that the NOI effectively would release confidential information provided by PG&E in this proceeding that the Executive Director previously has affirmed should be maintained as confidential, the NOI also would arbitrarily and without support reverse those previous Commission rulings. Moreover, to the extent that the NOI would release confidential information provided by PG&E and the other investor-owned utilities (IOUs) while maintaining the confidentiality of similar information provided by other LSEs, it would unfairly and arbitrarily discriminate against PG&E and the other IOUs. In support of its request for continued confidential treatment of this data, PG&E incorporates by reference herein the legal, factual and policy arguments in its previous filings in this proceeding designating this information as confidential.



more information on PG&E requirements. This effectively puts PG&E in the position of playing poker with an open hand.

PG&E has no objection to the public release of data in the NOI's Proposal 2 – Aggregation of all LSE Loads and Resources within a Geographic Region or Proposal 3 – Further Aggregation Across IOU Resource Plan Scenarios. These proposals appropriately provide useful information to policy-makers without disclosing commercially- and market-sensitive utility business planning data or trade secrets.

Quarterly Data Tables

The NOI indicates that in addition to annual data, the CEC intends to release quarterly demand and energy information as part of the Integrated Energy Policy Report (IEPR). PG&E objects to the release of all quarterly data regardless of level of data aggregation. This information is commercially and market sensitive trade secret information and serves no purpose other than to provide other market participants detailed information on PG&E's market position, thereby harming PG&E's ability to negotiate contracts and procure energy and capacity on behalf of its customers.^{3/}

- The release of quarterly data either at the utility level (Option 1), Planning Area level (Option 2) or at the utility forecast range (Option 3) would all cause harm to PG&E and its customers. The harm is caused by publicizing the magnitude of PG&E's seasonal energy and capacity positions, and the magnitude of this seasonality is evident regardless of how the CEC staff attempts to aggregate the information. Unlike SDG&E and SCE, PG&E generates, procures and utilizes significant quantities of seasonal energy and capacity on its system, given its large hydroelectric resources and proximity to similar resources in the Northwest.
- Northern California's generation and supply requirements are seasonal, which is currently well-known by the marketplace though the seasonal magnitude is not publicly known. The release of quarterly information would readily provide market participants with a detailed understanding of PG&E's seasonal requirements and market participation, which they may then use for their personal financial gain or to manipulate the procurement process at the expense of PG&E and its customers.

^{3/} PG&E notes the NOI is incorrect in its interpretation of the treatment of quarterly data in the CPUC ALJs' May 9, 2005 Ruling in R.04-04-003 and R.04-04-025, stating that the Ruling "orders the IOUs to release quarterly demand forecasts and quarterly forecasts of utility retained generation costs and production." The NOI apparently interprets this to mean that the CPUC is requiring all demand and supply elements to be disclosed to the public on a quarterly basis. Contrary to this interpretation, the ALJs' Ruling only requires utilities to make publicly available the quarterly 2006- 2010 total system demand, rather than the bundled customer peak demand forecasts that the NOI would make public. Additionally, the Ruling only requires the release of total utility-owned generation data by quarter, with no requirement for disaggregation of generation by resource or unit-type.



- As a matter of public policy, quarterly information, whether based on utility-specific demand, planning area demand, or a range of area demand, will not improve the understanding of utility or regional energy and capacity requirements. As all California LSEs will likely be procuring to an annual target, and it is well understood that all utilities in California are summer-peaking, the release of quarterly information will provide no meaningful information to policy-makers regarding future requirements that is necessary or useful in the IEPR process.
- This quarterly information should be maintained as confidential throughout the forecast period. While the magnitude of the PG&E's seasonal loads, generation, and market participation do change over time, the reality is that PG&E's capacity and energy requirements will be similar throughout the forecast period.

Summary of PG&E's Recommendation on Public Data Disclosure

	Proposal 1	Proposal 2	Proposal 3
	Utility Specific Information	Planning Area Data	Utility Data – Range
Annual Capacity	Confidential	Public	Public
Annual Energy	Public	Public	N/A
Quarterly Capacity	Confidential	Confidential	Confidential
Quarterly Energy	Confidential	Confidential	N/A

The Commission Should Consider The Interests of California Consumers First in This Proceeding

As PG&E, SCE and SDG&E stated in our May 20, 2005 comments, a copy of which is attached as Attachment 1, we understand the dilemma faced by the Commission : (1) the Energy Commissioners plan to rely solely on information in the record for their findings and recommendations in both the 2005 Energy Report itself, and for the accompanying transmittal to the CPUC; and, at the same time, (2) the Energy Commission is required by law to keep market-sensitive and trade secret LSE information confidential, because disclosing such information to the public (including market participants) would harm the LSEs and their customers. We appreciate the Energy Commission's effort to find a mutually acceptable solution which meets both objectives, and our May 20, 2005, comments continue to provide what we believe to be a credible and reasonable alternative to the proposals in the NOI.



However, as Staff and the Energy Commissioners acknowledge, the information here is not being developed in a vacuum. It is intended to be provided to the CPUC for a very specific purpose in a very specific CPUC proceeding, the CPUC proceeding which will be reviewing the utilities' Long Term Procurement Plans developed and submitted in accordance with Assembly Bill (AB) 57 and various CPUC decisions and rulings. Under the CPUC's Long Term Procurement Plan proceeding, key parts of the information we have provided under confidentiality to the Energy Commission are expressly protected from disclosure to market participants under current orders and rulings of the CPUC and in compliance with Public Utilities Code section 454.5(g), which requires the protection of market sensitive information from public disclosure. The Energy Commission is collaborating with the CPUC in the procurement process and is bound by those confidentiality requirements. We believe that the framework and confidentiality principles applicable in this important CPUC proceeding should be applicable to the NOI here as well.

As discussed above, the NOI proposals would release detailed forecast information that, even as proposed to be aggregated, allows PG&E's current forecast of energy supply and capacity needs to be derived, and could allow market providers to calculate PG&E's short-term needs, or needs in key components of the market it serves. By thus deriving PG&E's residual net position by year and quarter, potential suppliers achieve a competitive advantage that potentially harms PG&E's customers who may end up paying higher power prices. To release this information publicly would allow market participants to have access to competitively sensitive information that would normally not be available to them in this form or format. As a matter of law and public policy, the CEC should ensure that it does not facilitate availability of such data.^{4/}

The Notice of Intent Should Be Consistent With Confidentiality Policies Adopted by the CPUC

While acknowledging that the Energy Commission may be implementing confidentiality policies that are in conflict with those implemented by the CPUC, the NOI illogically cites a pending legislative directive to the CPUC to review its confidentiality policies on a comprehensive basis. (NOI, pp. 1- 2.). The fact that the CPUC is reviewing its confidentiality policies on a comprehensive basis is even more reason for the Energy Commission to do the same, and in close coordination with the CPUC. Elsewhere the NOI cites favorably a CPUC ruling implementing a protective order in the CPUC procurement proceeding which protects from public release much of the same energy and capacity information sought by PG&E to be protected in this proceeding, but then fails to acknowledge that major portions of the NOI

^{4/} As PG&E has committed in the CPUC procurement proceedings, PG&E is readily willing to provide access to all such confidential data to non-market participants in this proceeding, such as TURN and other customer groups who are non-market participants, under the same protective order and non-disclosure agreement requirements that it has agreed to in the CPUC proceedings. Thus, there should be no "due process" or "public interest" issue associated with maintaining confidentiality of this information in light of the interests of PG&E's customers or the representatives of those customers who share a common interest with PG&E in ensuring that PG&E's resource plans and procurement initiatives result in reasonable costs and reliable service.



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proposals are at odds with the very same CPUC protective order. (NOI, p. 5, citing May 9, 2005, CPUC ALJ Ruling in R.04-04-003 and R.04-04-025.) The CPUC ruling also makes clear that in balancing the public interest against the harm to PG&E and its customers if market sensitive information is released, "the risk to ratepayers of releasing data delineating the utility's RNS [residual net short] positions outweighs the public interest in making this data available to market participants..." and that "Our goal...is to make available to the parties sufficient data..., without subjecting utility ratepayers to the risk of market manipulation stemming from misuse of market-sensitive data." (CPUC ALJs' Ruling, May 9, 2005, R.04-04-003 and R.04-04-025, mimeo at pp. 12, 14.)

As part of its 2004 Procurement Proceeding, the CPUC used certain CEC staff as "collaborative staff," and that staff represented the CEC in the CPUC proceedings. In connection with the CEC's participation in the proceedings, the CPUC ruled that "the CEC's staff is functioning like the Commission's own advisory staff for purposes of this proceeding. As with past models of interagency collaboration, it is a 'given' that the CEC will honor any confidentiality claims that are ultimately upheld by the assigned ALJs in this proceeding and will ensure that any confidential or privileged documents are exempt from public disclosure under its regulations for confidential designation." (July 9, 2004, ALJ's Ruling Regarding Access of Collaborative Staff to Long-Term Plans and Supporting Testimony, attached as Attachment 2.)

It makes little sense for two state agencies receiving the same or similar information to treat it inconsistently. Moreover, differing levels of treatment for confidential information would undermine both the inter-agency cooperation agreement between the CPUC and CEC relating to long term electricity procurement planning, and the forward progress the two agencies have made over the last few years toward smooth policy coordination. See "Joint Opening Statement of CPUC President Michael Peevey and CEC Commissioner John Geesman," CPUC R. 04-04-003, April 30, 2004; "Assigned Commissioner's Ruling on Interaction Between the CPUC Long-Term Planning Process and the California Energy Commission (CEC) Integrated Energy Policy Report (IEPR) Process," CPUC R. 04-04-003, September 16, 2004.

PG&E's expert declaration submitted in this proceeding demonstrates that the more detail that is made public concerning a utility's relative peak demand and capacity positions, the greater the potential for market abuse. Suppliers could calculate adjustments to a utility's resource portfolio and be able to determine more accurately the utility's incremental needs from the market. Suppliers might then bid up prices either through additional buying or less aggressive selling, in anticipation of significant purchases by the utility, as compared with prior periods. See Attachment 3, "Comments of Pacific Gas and Electric Company on Confidentiality Issues," California Public Utilities Commission Docket R. 01-10-024, March 1, 2004, pp. 8- 9 and Attachment A, "Declaration of James Shandalov."

Conclusion

PG&E appreciates the efforts of Commission staff to strike an appropriate balance on confidentiality issues in this proceeding. However, for the reasons stated above, the NOI would not strike this balance, would contravene the public interest, and would violate the Commission's legal obligations under Public Resources Code §25901, Government Code §6254(k), Civil Code



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§3526 *et seq.*, Evidence Code §1060, and Public Utilities Code §454.5(g). PG&E requests that the Energy Commission grant this appeal, and reject or revise the NOI as requested in this appeal. If the Commission chooses not to grant this appeal at this time, it must provide PG&E, prior to acting on the appeal, and other interested parties with an opportunity for evidentiary hearings at which the impacts of the NOI on energy markets and procurement costs can be evaluated in detail, including consideration of expert testimony on the risk that the NOI will result in adverse manipulation and gaming in California's electricity markets.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Christopher J. Warner'.

Christopher J. Warner

CJW/mw

Attachments

cc: Joe Desmond, Chairman
Art Rosenfeld, Commissioner
John L. Geesman, Commissioner
Jackalyne Pfannenstiel, Commissioner
James D. Boyd, Commissioner
Scott W. Matthews, Acting Executive Director
Kevin Kennedy, Energy Report Program Manager
Caryn Holmes, Energy Report Committee Counsel

ATTACHMENT 1

Warner, Christopher (Law)

From: Beth.Fox@SCE.com
Sent: Friday, May 20, 2005 5:16 PM
To: kkennedy@energy.state.ca.us
Cc: cholmes@energy.state.ca.us; mjaske@state.ca.us; Anderson, Robert B. (Rob); Beth.Fox@SCE.com; Warner, Christopher (Law); dhaval.dagli@SCE.com; Baker, Georgetown; La Flash, Hal (GES); Janos.Kakuk@SCE.com; kevin.cini@SCE.com; Treleven, Kathleen; Guliasi, Les; manuel.alvarez@SCE.com; Stu Hemphill; Frank.Cooley@SCE.com; Michael.Backstrom@SCE.com; Gary.Schoonyan@SCE.com; Laura.Genao@SCE.com
Subject: SCE, PG&E and SDG&E Preliminary Comments on CEC Aggregation Proposal



Joint



SDG&E-SCE-PG&E

SDG&E-PG&E writte joint proposal ...

Kevin:

Over the past two days, SCE, PG&E and SDG&E have cooperated in preparing comments on the proposal for aggregation of data which was advanced by the CEC and discussed at our May 18, 2005 meeting. We have also prepared alternative forms for release of aggregated data. The Word file attached below contains our written comments. The Excel file contains the proposed forms.

(See attached file: Joint SCE-SDG&E-PG&E written response to Staff disclosure porposal 05.20.05 .doc) (See attached file: SDG&E-SCE-PG&E joint proposal for Aggregate Forms 05.20.05.xls)

Beth A. Fox
Senior Attorney, Southern California Edison Company
Telephone: 626-302-6897 or PAX 26897
E-mail: Beth.Fox@sce.com

May 20, 2005

PRELIMINARY COMMENTS OF SCE, PG&E AND SDG&E ON ENERGY
COMMISSION PROPOSAL TO AGGREGATE INFORMATION

Thank you for the opportunity to discuss your proposal for publicly disclosing aggregated demand/supply information, which may be used by the California Public Utilities Commission (CPUC) in its 2006 long-term procurement proceeding. These comments are preliminary but represent the joint views of SCE, PG&E, and SDG&E, subject to further details on Energy Commission Staff's proposal that we may receive.

We understand the dilemma faced by Staff: (1) the Energy Commissioners plan to rely solely on information in the public record for their findings and recommendations in both the 2005 Energy Report itself, and the accompanying transmittal to the CPUC; and, at the same time, (2) the Commission is required by law to keep market-sensitive and trade secret Load Serving Entity (LSE) specific information confidential, as disclosing such information to the public (including market participants) would harm LSEs' customers. We appreciate Staff's effort to find a mutually acceptable solution which meets both objectives.

However, as Staff and the Energy Commissioners acknowledge, the information here is not being developed in a vacuum. It is intended to be provided to the CPUC for a very specific purpose in a very specific CPUC proceeding: the CPUC proceeding which will be reviewing the utilities' Long Term Procurement Plans developed and submitted in accordance with Assembly Bill (AB) 57 and various CPUC decisions and rulings. Under the CPUC's Long Term Procurement Plan proceeding, key parts of the information we have provided under confidentiality to the Energy Commission are expressly protected from disclosure to market participants under current orders and rulings of the CPUC and in compliance with Public Utilities Code section 454.5(g), which requires the protection of market sensitive information from public disclosure. The Energy Commission is collaborating with the CPUC in the procurement process and is bound by those confidentiality requirements. We believe that the framework and confidentiality principles applicable on this important CPUC proceeding are a very essential context for

how we and you should review the level of protection that should be provided to the information that is the subject of your aggregation proposal.

We generally agree with the three general approaches to aggregate information, that is: (1) aggregate data on a geographic basis; (2) aggregate monthly data into annual numbers; and (3) aggregate categories of resources.

As we mentioned in our meeting on May 18, however, we have some concerns with the Staff proposal. First, the Staff should treat all load serving entities equally with regard to all public policy considerations. There is no sound public policy to do otherwise. In an environment where a competitive retail market may emerge, it is critical to not advantage any one set of load serving entities over another. This important public policy was recognized when Resource Adequacy requirements were established and it should apply to all other obligations being placed on load serving entities. (Indeed, if the purpose of disclosing data is to track the achievement of Resource Adequacy requirements, the same data must be made available for each LSE.) With regard to Staff's specific proposal for aggregating data, the same standard for disclosing market sensitive information should apply to all LSEs and disclosure should be made accordingly.

Second, with respect to Table 1, Table 2 and Table 3, we have the following concerns and alternative proposals.

As we understand it, the CEC's proposal was to make versions of Table 2 and 3 available both on a planning area basis and for the bundled customers of the individual IOUs. Therefore, we want to comment on Table-2 and Table-3 separately for geographically-aggregated forms and IOU-specific forms.

Demand/supply tables for the planning area

General comments

We understand that the objective of geographic aggregation is to discern the supply/demand balance for the loads within various areas of the state.

However, aggregating the submittal by “IOU transmission planning area” is not the right level of aggregation, since it will not meet the objective stated above.

- a. The tables will not show whether LSEs will have sufficient deliverable resources;
- b. The tables will not allow the Commission to assess how much new generation is needed and where it should be located; and
- c. Tables showing un-contracted positions do not lead to any useful information for determining the need for new generation resources, the types of those resources or their location.

Not only does this aggregation fail to meet any discernible objectives, but it puts sensitive IOU data at risk. As the Staff proposal states, IOU bundled customers’ load averages about 85% of the peak demand in each planning area. It is possible to estimate relatively accurately small LSEs’ loads and resources and reengineer the IOUs’ bundled customer resource needs – particularly if one assumes that the ESPs’ needs are filled primarily by contracts.

Therefore, the IOUs would prefer, as an alternative, to aggregate load information by “North/South California” or by NP/SP zones (consistent with transmission constraints). This proposal would seek to evaluate all loads and resources in transmission-constrained areas so that the need for new generation or transmission projects becomes more apparent. This table would not disclose which LSEs are included in the aggregated geographic area, their individual loads, or their specific resources (unless already publicly available).

However, for the 2005 IEPR we are willing to allow Tables aggregated by planning area based on the versions attached to this letter.

Table 2

As we understand it, Commission Staff is proposing to disclose separate tables for each scenario which would reveal specific resource needs. As you mentioned in our

meeting on Wednesday, however, the CPUC had requested only ranges and not specific resource needs.

Therefore, at the planning area level, we propose to prepare only one capacity table which would show the ranges of the various scenarios, including the reference case, preferred case, accelerated renewable and core/non-core scenarios. We have provided a version of this table with the rows that would be acceptable as Table S-1.

Table 3

As you mentioned in the meeting, the energy table is less problematic and we agree. The energy tables aggregated at the planning area are acceptable, and the IOUs could accept disclosure of ranges of the data based on the Table S-2 that is attached.

Capacity/energy tables for the IOU bundled customers

Table 2

As we understand it, the CEC Staff proposed to disclose individual IOU bundled customer capacity information for each scenario. Disclosing LSE-specific capacity data is the most problematic part of the Staff proposal. The current proposal revealing IOUs' residual resource needs on an annual basis starting 2006 is not acceptable. It is the single most market-sensitive, trade secret data we hold, as each utility procures, generally, to meet that level for third quarter products. Each of the respective IOUs is committed to protect this information. This would potentially include seeking writs of mandate in court.

The IOU's have already provided public data regarding their capacity position (S-1 Public Forms or S-6 Forms filed as part of our March 1 and April 1, 2005 filings). The IOUs cannot agree to allow any further disclosure at this time. Disclosure of the range of energy (not capacity) needs appears to be sufficient to meet the CEC's and CPUC's objectives.

Table 3

As we understand it, Staff is also proposing to disclose energy information for each scenario which would reveal residual resource needs.

As we mentioned Wednesday, we have two concerns with the proposal at the IOU specific level. First, the proposed table would disclose annual data for the first three years beginning in 2006. This information would have little value for developing new resources in the State but is valuable, market-sensitive information that market participants can use against buyers to meet short-term procurement requirements. We note that PG&E has not requested confidential treatment of its annual energy data for the first three years, 2006-2008. Second, Staff proposed to prepare separate tables for each scenario which would reveal residual resource needs for that scenario. As you mentioned yesterday, the CPUC requested ranges and not specific residual resource needs.

Therefore, the IOUs propose that Staff provide a range for each LSE's resource needs based on the scenarios the LSEs filed with the Commission, and to disclose this information only beginning in 2009 based on the table S-3 included with this letter. This should apply to all LSEs.

Potential additional Tables

Since the IOUs removed some level of disaggregation from the CEC proposed format that the CEC may find useful in public forums, the IOUs are willing to work with the CEC on developing additional tables. As an example, the IOUs would not object to a table that shows the generic needs by type on an SP/NP basis.

We believe that this proposal reflects the solution we discussed in our meeting and would be a workable approach to ensure balancing the Commission's preferences and our concerns about revealing market sensitive information to market participants. This proposal would also ensure expedited disclosure of the aggregated information to meet the Commission's timeline.

Proposed Aggregation for Planning Area Energy Accounting Table S-2

20-May-05

PROPOSED LEVEL OF AGGREGATION

Existing & Forecasted Renewable Contracts:

Total Energy Supply from Renewable Contracts

Other Bilateral Contracts:

Total Energy Supply from Other Bilateral Contracts
and DWR Dispatchable Contracts

Short Term and Spot Market Purchases:

Short Term and Spot Market Purchases (1)

TOTAL: EXISTING & PLANNED ENERGY

FUTURE GENERIC RESOURCE NEEDS

Generic Baseload, Load-following and Peaking Energy

Total Future Generic Resource Needs

(1) Net of sales

ATTACHMENT 2

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Promote Policy
and Program Coordination and Integration in
Electric Utility Resource Planning.

Rulemaking 04-04-003
(Filed April 1, 2004)

**ADMINISTRATIVE LAW JUDGE'S RULING
REGARDING ACCESS OF COLLABORATIVE STAFF
TO LONG-TERM PLANS AND SUPPORTING TESTIMONY**

Pursuant to the schedule adopted in the Assigned Commissioner's Ruling and Scoping Memo, Pacific Gas and Electric Company (PG&E), Southern California Edison Company (Edison), and San Diego Gas & Electric Company (SDG&E) are to serve their long-term plans and supporting testimony (the July 9 submissions) today. The review of these materials is being undertaken by the California Public Utilities Commission (CPUC) staff and the California Energy Commission (CEC) staff, who are working collaboratively in that effort in accordance with the provisions of the Order Instituting Rulemaking and under the direction of CPUC Assigned Commissioner Michael Peevey and CEC Commissioner John Geesman.¹ Essentially this means that the CEC's staff is functioning like the Commission's own advisory staff for purposes of this

¹ See *Joint Opening Statement of CPUC President Michael Peevey and CEC Commissioner John Geesman*, read into the record of the April 30, 2004 Prehearing Conference in this proceeding. As the *Opening Statement* indicates, the CEC is not a party to this proceeding, but is engaged in a collaborative role with the CPUC.

proceeding. As with past models² of interagency collaboration, it is a “given” that the CEC will honor any confidentiality claims that are ultimately upheld by the assigned ALJs in this proceeding and will ensure that any confidential or privileged documents are exempt from public disclosure under its regulations for confidential designation (Cal. Code Regs., tit. 20, § 2501 et seq.).

It is critical that collaborative staff and decisionmakers of both agencies have access to the same level of detail contained in the July 9 submissions. PG&E and SDG&E have recognized the need for this parity of information and will provide it. Edison is unwilling to do so in the absence of formal direction from the ALJ.

Therefore, **IT IS RULED** that:

1. The long-term plans and supporting testimony submitted in this proceeding shall be provided by Southern California Edison Company, Pacific Gas and Electric Company, and San Diego Gas & Electric Company on July 9 to the California Energy Commission (CEC) collaborative staff on the same basis, i.e., to the same nature and extent, as it is provided to the California Public Utilities Commission (CPUC) collaborative staff in this proceeding. To that end, copies of the July 9 submissions, including any information submitted as confidential, shall be provided to all CEC individuals on the service list, plus an additional 10 copies to Karen Griffin of the CEC, at the same time the submissions are provided to CPUC staff.

² See, e.g., the February 3, 2004, Ruling issued by Administrative Law Judge (ALJ) Peter Allen in Rulemaking 01-10-024 discussing the informational needs of RPS collaborative staff.

2. CEC staff shall not publicly disclose any confidential information included in the materials submitted by the utilities.

Dated July 9, 2004, at San Francisco, California.

/s/ LYNN T. CAREW
Lynn T. Carew
Assistant Chief
Administrative Law Judge

CERTIFICATE OF SERVICE

I certify that I have by mail, and by electronic mail to the parties to which an electronic mail address has been provided, this day served a true copy of the original attached Administrative Law Judge's Ruling Regarding Access of Collaborative Staff to Long-Term Plans and Supporting Testimony on all parties of record in this proceeding or their attorneys of record.

Dated July 9, 2004, at San Francisco, California.

/s/ KE HUANG

Ke Huang

N O T I C E

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to ensure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

ATTACHMENT 3

Pacific Gas and Electric Company

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415/973-6669
Telecopier 415/973-9271

Edward V. Kurz
Attorney at Law

Mailing Address

P.O. Box 7442
San Francisco, CA 94120

March 1, 2004



HAND DELIVERED

Docket Clerk
Docket Office
Public Utilities Commission
of the State of California
505 Van Ness Avenue, Room 2001
San Francisco, CA 94102

Re: Order Instituting Rulemaking to Establish Policies and Cost Recovery
Mechanisms for Generation Procurement and Renewable Resource
Development – Rulemaking 01-10-024

Dear Docket Clerk:

Enclosed for filing in the above-captioned matter is an original and five (5) copies of
Comments of Pacific Gas and Electric Company (U 39 E) on Confidentiality Issues.

Please file the original document, date-stamp a copy, and return the endorsed copy in
the stamped self-addressed envelope provided for this purpose.

Very truly yours,

A handwritten signature in black ink, appearing to read "E.V. Kurz", with a large, sweeping flourish extending from the end of the signature.

EDWARD V. KURZ

EVK:sl

cc: Michael R. Peevey, Assigned Commissioner
Christine M. Walwyn, Administrative Law Judge
All Parties in Rulemaking 01-10-024

Enclosure

**BEFORE THE
PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**

Order Instituting Rulemaking to Establish
Policies and Cost Recovery Mechanisms for
Generation Procurement and Renewable
Resource Development.

Rulemaking 01-10-024
(Filed October 25, 2001)

**COMMENTS OF
PACIFIC GAS AND ELECTRIC COMPANY (U 39 E)
ON CONFIDENTIALITY ISSUES**

WILLIAM V. MANHEIM
CHRISTOPHER J. WARNER
JOHN W. BOGY
EDWARD V. KURZ
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Attachment A – Declaration of James Shandalov

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**

Order Instituting Rulemaking to Establish
Policies and Cost Recovery Mechanisms for
Generation Procurement and Renewable
Resource Development.

Rulemaking 01-10-024
(Filed October 25, 2001)

**COMMENTS OF
PACIFIC GAS AND ELECTRIC COMPANY (U 39 E)
ON CONFIDENTIALITY ISSUES**

I. INTRODUCTION

Pursuant to Ordering Paragraph 11 of Decision 04-01-050 as modified by a February 6, 2004 letter from the Executive Director of the California Public Utilities Commission (Commission) extending the due date for filing these comments to March 1, 2004, Pacific Gas and Electric Company (PG&E) submits these comments on confidentiality issues. Specifically, Decision 04-01-050 asked for comment on three issues: (1) the Commission's felt need to re-examine the framework of confidential information adopted in an April 4, 2003 Assigned Administrative Law Judge (ALJ) Ruling (Ruling) in the context of the perceived transparency in the 2003 Integrated Resource Plan of PacifiCorp (PacifiCorp Plan); (2) how ratepayers could be harmed if the Commission makes "public all product, price, and availability information contained in the IOUs' procurement-related applications"; and (3) "whether and how California ratepayers could be harmed by having all data contained in the IOUs' quarterly procurement transaction compliance filings be submitted as public information not subject to confidentiality protections."^{1/}

The Commission has stated that its reexamination of confidentiality issues is motivated by a concern that "the public has meaningful access to the Commission's decision-making" and by "an effort to promote the widest possible dialogue on utility planning matters in California...."^{2/} As it proceeds with this reexamination, the Commission should bear in mind which members of the public will benefit most from the public revelation of information that is

^{1/} D.04-01-050, mimeo pp. 174-175.

^{2/} Id at mimeo p. 178.

currently kept confidential and which members of the public will be harmed. A careful balancing of the competing interests of different sectors of the public is crucial to ensuring the utilities' customers are not harmed by providing data to a few groups that could adversely affect the costs the utilities' customers pay.

The existing confidentiality framework set forth in the Ruling in conjunction with existing protective orders already provides full access to all information, confidential or not, to virtually all members of the public interested in participating in this process. The only segment of the interested public whose access is somewhat restricted is composed of the suppliers and marketers who sell their energy-related products to, ultimately, California's ratepayers.

While the participation of this segment in the resource planning process is necessary, granting it full access to all information, including utility procurement strategies along with other generator-specific information, is not. The non-market participants who now have such full access are sufficiently numerous and diverse to ensure that the ratepayers are amply represented and their interests advanced. It is not clear how the ratepayers' interests would be further advanced or benefited if the firms that sell their products to those ratepayers were given access to confidential information. It is clear, however, that the interests of those firms would be advanced and benefited by access to such information.

As PG&E explains in detail below, suppliers and marketers use the information they gather about the market to obtain the optimal price for their firms. Such behavior is entirely rational in a competitive system. But the higher the prices these firms are able to obtain, the higher the costs to the ratepayers who must bear these costs in the end. When in doubt about whether to liberalize access to confidential information which principally benefits suppliers and marketers, the Commission, whose mandate includes ensuring just and reasonable rates, should err on the side of protecting the ratepayers' interests. In addition, the Commission must carry out the Legislature's intentions regarding confidentiality.

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Public Utilities Code Section 454.5(g) mandates that certain procurement-related information be kept confidential.^{3/} The only practical resolution of the statute's mandate and the Commission's desire to make more information public is to maintain a framework like the one the Ruling adopted. In Section II of these comments, PG&E suggests possible modifications to the Ruling that should make more information public. In Sections III, IV and V, PG&E discusses how the Ruling, as modified, should apply to: (1) the PacifiCorp Plan; (2) product, price and availability applications; and (3) the utilities' quarterly procurement transaction compliance filings.

II. HOW THE RULING MAY BE MODIFIED TO MAKE PUBLIC MORE INFORMATION CONSISTENT WITH SECTION 454.5(g)

PG&E appreciates the Commission's intention "to broaden the scope of information embedded in utility resource plans that can be made public,"^{4/} especially given the Senate Energy, Utilities and Communications Committee's interest in this subject. The interest of the Commission and the Committee in making more procurement information publicly available, however, must be considered in the context of the interest the Legislature as a whole expressed in Section 454.5(g), which states the Commission "shall adopt appropriate procedures to ensure the confidentiality of any market sensitive information submitted in an electrical corporation's proposed procurement plan or resulting from or related to its approved procurement plan"

The statute's mandatory language ("shall adopt procedures to ensure confidentiality") imposes on the Commission an affirmative duty to maintain the confidentiality of "market sensitive information," and withholds from the Commission the discretion to make public market sensitive information. This "plain meaning" of the words of the statute is strongly supported by the statute's legislative history.

As originally drafted, subdivision (g) relied on Section 583: "Under the protection of Section 583, each electrical corporation shall file quarterly with the commission its long-term

^{3/} All further references to statutes in these comments are to provisions of the Public Utilities Code.

^{4/} D.04-01-050, mimeo p. 174.

forward contracts and financial contracts”^{5/} Section 583 declares that material submitted to the Commission must be kept confidential (unless specifically required by statute to be open to public inspection), but gives the Commission the discretion to make material protected by Section 583 public “on order of the commission, or by the commission or a commissioner in the course of a hearing or proceeding.”

The language of subdivision (g) that the Legislature ultimately adopted eliminated the reference to Section 583 and substituted the language of Section 454.5(g) cited above.^{6/} This language gives the Commission the discretion to determine procedures by which certain nonmarket participants may gain access to confidential information, but the language grants the Commission no discretion to make public “market sensitive information.”

In addition, the statute’s reference to “market sensitive information” indicates that in determining whether to make public the information the utilities provide in their procurement plans, the Commission’s focus should be on whether the information is in fact “market sensitive.” In Decision 04-01-050, the test the Commission apparently articulated for keeping information confidential is “ratepayer harm,” which is not necessarily coextensive with information that is “market sensitive.” The release of market sensitive information may not result in ratepayer harm, but the language of Section 454.5(g) nevertheless requires such market sensitive information to be kept confidential. If, as a condition of confidentiality, the Commission requires utilities to demonstrate not only that the information is market sensitive, but also that the release of that information could result in ratepayer harm, the Commission would impose a requirement more rigorous than and beyond the scope of Section 454.5(g).

Given the Commission’s obligation to maintain the confidentiality of market-sensitive information and its desire to make public more procurement-related information, the Commission must have in place a framework similar to that adopted in the Ruling. In the subsections below, PG&E discusses the categories of information in the Ruling and suggests

^{5/} Assem. Bill No. 57 (2001-2002 Reg. Sess.) as amended April 16, 2001.

^{6/} The language of subdivision (g) first appeared in Assem. Bill No. 57 as amended on September 14, 2001.

certain modifications designed to make public more procurement-related information consistent with the mandate of Section 454.5(g). The subheadings paraphrase the text describing the categories identified in the Ruling as modified in that Ruling. As PG&E explains, such confidential protection is certainly justified under the “market sensitive” test of Section 454.5(g), and is justified as well under the more rigorous “ratepayer harm” test.

As evidence of the market sensitive nature of the information as well as the harm ratepayers could suffer if such information were made public, PG&E provides the perspective of a market participant who has actual experience in the California energy market. James D. Shandalov, whose declaration is appended as Attachment A, was until recently a Director for Mirant Americas Energy Marketing L.P. In that position, Mr. Shandalov’s responsibilities included originating long-term supply contracts to California wholesale customers, including public utilities, municipalities and load aggregators. Mr. Shandalov discusses how suppliers could make use of the information, which the Ruling currently protects, to obtain prices higher than they may have been able to obtain if the suppliers did not have access to this market sensitive information. He also discusses the ratepayer harm that could result from the public release of such information.

A. Long term base case procurement planning assumptions on an annual average basis (forecasts of annual average natural gas price, annual average on-peak and off-peak electricity prices, and annual average new generation resource costs) are confidential only for first three years after filing.

This category should remain unchanged. The three-year confidentiality period is necessary because PG&E relies on its own, internally developed assumptions of natural gas prices and on- and off-peak electricity prices. As PG&E interprets the three-year confidentiality period, PG&E would make public at the time of filing the planning assumptions for years four and beyond. Thus, the only planning assumptions that would be treated as confidential would be those for years one through three. Forecasts for these early years are market sensitive because suppliers have more pricing power in the near term given the insufficient time for the construction of new generation.

Unless the planning assumptions are aggregated in a manner that adequately masks the underlying data, ratepayer harm results from the release of such information because such data provides positive evidence about what the utilities actually think future prices will be. Armed with this information, suppliers can price their products accordingly. If suppliers know what prices the utilities are predicting, the suppliers have little incentive to offer the utilities a price below those predictions, thereby foreclosing the possibility that, in the absence of this market intelligence, the suppliers may have offered a lower price. (Shandalov Declaration ¶ 8.)

Alternatively, if the suppliers know that utilities are forecasting prices lower than the market or what some suppliers are willing to offer, this knowledge may induce suppliers to sell their products in other markets rather than directly to California utilities. Additionally, suppliers may make sales in the more volatile shorter-term markets rather than longer-term forward markets. To the extent the utilities' lower, forecast prices lead to a drop in forward market price, this drop could in turn lead to accelerated retirement of older generating capacity, which could result in ratepayer harm during a time of capacity shortage. (Id.)

As for annual average new generation costs, utilities could rely on publicly available information. For example, in 2003, the California Energy Commission (CEC) published a Final Staff Report titled "Comparative Cost of California Central Station Electricity Generation Technologies," issued in Docket 02-EIP-01. This report presents generic capital, Operation and Maintenance (O&M) and financing information as well as information concerning the operating characteristics of several different kinds of generation resources, which utilities could use as a proxy for future filings.

If the Commission requires utilities to provide more detailed location-specific information, the utilities could develop such information by working with an Engineering, Procurement and Construction (EPC) firm to estimate development, construction, O&M and financing costs for several different kinds and configurations of power plants. The utilities should be permitted to maintain the confidentiality of such information for a three-year period after filing. If such internally developed information were made public, potential bidders on EPC

projects might adjust their prices accordingly, denying ratepayers the opportunity of obtaining lower, more competitive prices.

B. Any Standard Practice Manual (SPM) input assumptions (e.g. value of avoided energy) that are otherwise confidential in the context of energy efficiency and DSM analysis, provided that the foregoing language should not independently result in making additional information confidential.

This category should remain in effect, however, additional information may be made public by limiting the period of confidentiality protection to three years after the information is filed. This change assumes that the utilities are permitted to submit the data in aggregated form. If suppliers know how a utility values avoided energy costs on an hourly basis, for example, in a period of high demand, they will be motivated to price their products just below the utility's forecast cost. Making such information public reduces competitive pricing, thereby foregoing the potential that ratepayers will be able to obtain a fair market price. (Shandalov Declaration, ¶ 9.)

C. Electric procurement plans, and fuel buying and hedging plans.

The Ruling correctly determines that information concerning a utility's procurement plans, and fuel-buying and hedging plans should be kept confidential. Such information falls squarely within the protection of Section 454.5(g). Moreover, making such information public would clearly result in harm to ratepayers. For utilities, the largest buyers of capacity and energy in their respective service areas, market perceptions about the buyers' resource needs can influence market prices. For example, PG&E, whose net open position begins to increase in 2006, will become even more sensitive to the market as its market purchases become an ever-growing proportion of its resource portfolio. (Shandalov Declaration ¶ 10.) It is essential that certain information remain confidential to prevent harm to ratepayers. Suppliers should not know either the exact amount of PG&E's net open position or PG&E's detailed plan and timing to cover that position. If that information were made publicly available, suppliers could attempt to obtain higher prices as the net open position increases and older capacity retires. (Id.)

With respect to fuel buying and hedging plans, PG&E already provides information on its natural gas open positions for its owned fossil fuel generation, Qualifying Facility (QF) contract

hedging, and Department of Water Resources (DWR) contract hedging. PG&E operates only 270 MW of gas fired generation capacity at Hunters Point (163 MW) and Humboldt (53 MW and 54 MW). Each of these units is a Reliability Must-Run (RMR) unit as designated by the California Independent System Operator (ISO) and generates predictable annual energy production. PG&E must keep the fuel buying and hedging plans confidential. For hedging Short Run Avoided Cost (SRAC) energy payments (under QF contracts) and DWR dispatchable energy contract costs, the quantities of gas involved are large enough to affect, potentially, the market; therefore, the annual quantities, as well as a detailed plan for the timing of the hedges must remain confidential. Additionally, with respect to DWR contract hedging, not only would a disclosure of the short position signal how much gas PG&E would need to hedge, but it would also indicate the capacity factor at which PG&E is planning to dispatch the DWR contracts at the contract heat rate. This would further indicate PG&E's view of the gas and power markets and potentially influence bidding behavior of market participants. (Shandalov Declaration ¶ 11.)

D. Energy, not capacity, mix (forward looking forecasts), by percentage of the utilities' own generation facilities, QF power, "old world" PPAs, DWR contracts, and "new world" utility procurement activities^{7/} reported in MWh, not MW.

This category must remain unchanged. PG&E agrees that public disclosure of annualized energy mix will not cause harm to ratepayers. If utilities are required to provide data for monthly periods, however, it would be less difficult for suppliers to determine the utilities' marginal costs at different times of the year, and the potential for ratepayer harm in the form of higher procurement costs would exist. For example, monthly forecast information would show seasonal trends in a utility's own energy production as well as the proportion of energy to be purchased from the market. For the summer in particular, suppliers could better determine the magnitude of the utility's market purchases and compare it with their own view of the market. With this knowledge, suppliers could inadvertently bid up prices, either through additional buying or less

^{7/} "New world" utility procurement activities are those that have taken place since the utilities were allowed to participate in markets outside of the basic PX and ISO markets. "Old world" procurement relates to contracts entered into before the beginning of the AB 1890 transition period. Procurement activities include sales as well as purchases of power.

aggressive selling in anticipation of significant utility purchases from the market, as compared to prior periods. (Shandalov Declaration, ¶ 12.)

E. Peak day resource needs, and further disaggregation of energy mix, by either time period or resource type including information on procurement of natural gas to be used to generate power.

It may be possible to make public information concerning the utilities' peak day resource needs subject to a confidentiality period of three years. Only information for the first three years after filing would be kept confidential; information for the fourth year and beyond would not be confidential. Even with such a three-year confidentiality period, however, suppliers could use the peak day forecast data for the fourth year along with actual peak load data for prior years, as filed in a utility's FERC Form 1, to interpolate the peak day needs for the years in between, including the current year. (Shandalov Declaration, ¶ 13.)

PG&E is open to further disaggregation of energy mix by resource type, particularly as it relates to renewable energy. The Commission should not require utilities to make public information concerning energy mix disaggregated by shorter time periods. The more detail that is made public concerning a utility's relative monthly positions, the greater the potential for price volatility and market abuse. Suppliers could calculate from month to month or year to year actual adjustments to a utility's resource portfolio and be able to determine more accurately the utility's incremental needs from the market. Suppliers might then inadvertently bid up prices either through additional buying or less aggressive selling, in anticipation of significant market purchases by the utility, as compared with prior periods. (Shandalov Declaration, ¶ 14.)

With respect to disaggregation of data for DWR dispatchable power contracts and "new world" Power Purchase Agreements (PPAs), the data should continue to be confidential. If suppliers know exactly how much energy a utility expects to receive pursuant to the dispatchable contracts, they can pinpoint much more exactly how much the utility will need to buy from the market, and adjust their prices accordingly. (Shandalov Declaration, ¶ 15.)

With respect to procurement of natural gas to be used for generating power, see the discussion in subsection C above.

F. Power Purchase Agreements in effect.

Except to the extent PPAs already are public, PPAs in effect should remain confidential because Section 454.5(g) specifically identifies PPAs as market sensitive information. Ratepayers would be harmed by the release of such information because suppliers would gain greater intelligence on how much a utility is willing to pay for various types of products. Such information would provide insight into a utility's risk management approach. Suppliers would get a better sense of what products a utility has procured to cover its net open position. The products could be standard, on-peak 16-hour blocks of energy, or 4- to 8-hour super-peak delivery profiles, or dispatchable energy and capacity, or call options (with fixed or indexed strike prices), and the like. Suppliers may be able to stack these products on top of the utility's other resources to determine from a capacity perspective the extent to which a utility has covered its net open position and how much will be left to cover in the more volatile, shorter term markets. It would allow suppliers to see which other suppliers already have agreements in place with a utility and on what terms, which would enable suppliers to test how much more the utility may be willing to pay for similar products in future solicitations by offering such products at higher prices. Suppliers would also gain intelligence on the open positions of other suppliers, specifically with respect to how much less long or how much more short a position another supplier now has as a result of contracting with a utility. (Shandalov Declaration, ¶ 16.)

Ratepayers might be exposed to higher costs if the PPAs are made public because this information may affect a utility's negotiating power on both price and contract terms for future transactions because prospective suppliers will view existing PPAs as evidence that a utility has been willing to agree to certain price and contract terms. Furthermore, if the utility is in the market to procure more of a similar product or products, there will be less supply than in the previous solicitation and may result in higher prices and less flexible contract terms because suppliers will know the utility is still short and must cover its open position. (Id.)

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G. Aggregate data relating to renewable energy supplies, including summary of PPA information.

At the time the Ruling was issued, parties anticipated that confidentiality issues concerning renewables would be determined in the renewables phase of the OIR. PG&E continues to believe the renewables phase is the appropriate forum. Although issues concerning confidentiality are still not resolved in that phase, PG&E believes the issues may be resolved soon. There will likely be a greater degree of disclosure with respect to renewable energy supply data than non-renewable energy supply data given the mandatory nature of the renewables program and the process for accessing Public Goods Charge monies.

H. PPAs with affiliates.

At the time the Ruling was issued, the current moratorium on utilities' ability to enter into PPAs with their affiliates was in effect. It was suggested that whether PPAs with affiliates should be disclosed publicly should be determined in whatever proceeding considers lifting the moratorium. The Ruling adopted this suggestion, adding:

If a proceeding does directly address the lifting of the current moratorium, the issue of disclosure of PPAs with affiliates may be addressed in that proceeding. If the moratorium is lifted without a proceeding (by passage of time, for example), or if the issue of disclosure is not addressed in the proceeding that lifts the moratorium, then PPAs with affiliates shall be publicly disclosed in their entirety. At such time as the issue becomes ripe, a motion may be brought in this proceeding or before the law and motion ALJ to seek confidential treatment of such PPAs. (Mimeo p. 12.)

PG&E believes the Ruling's resolution of this issue continues to be appropriate.

I. Energy sales forecasts (including losses) to the wholesale market should be maintained as confidential.

PG&E already makes public annual energy forecast information regarding "old world" wholesale transactions, as well as information that includes, in aggregate, both the DWR dispatchable contracts and "new world" wholesale transactions. As discussed in subsection E above, PG&E would continue to provide annualized, aggregated information that includes both the dispatchable DWR contracts and "new world" wholesale transactions. With only aggregated annual MWh data, it would be difficult for suppliers to discern exactly when a utility's wholesale sales and purchases occur, whether for a particular month or for on-peak versus off-peak power

and how the DWR contracts are expected to be dispatched. The Commission should not make public a further disaggregation by month or delivery period because such information has the potential to identify more clearly when utilities' net open position is greatest, enabling suppliers to raise their prices in anticipation of the higher demand. (Shandalov Declaration ¶ 17.)

J. Peak day load and capacity needs.

PG&E believes this category is coextensive with the category discussed in Section II.E., above. Therefore, the discussion of ratepayer harm in that section applies to this category as well.

K. Past fuel buying and hedging information to be provided in monthly aggregate form, with a retrospective confidentiality window of two years.

This category should remain unchanged. If this information were made available before expiration of the two-year confidentiality period, suppliers would be better equipped to determine how a utility has hedged its natural gas price risk for QF contracts and the dispatchable DWR contracts. Based on public information the ISO publishes within 45 days after the end of a calendar year regarding annual energy production at the utilities' RMR facilities, suppliers could "reverse engineer" the amount of gas utilities bought for hedging the QF energy and DWR contracts on an annual basis if the confidentiality provision for fuel buying and hedging was shorter than two years. By keeping the confidentiality period at two years, the risk of harm to ratepayers is mitigated because enough factors will have changed over two years to make the information less useful on a going-forward basis. (Shandalov Declaration ¶ 18.)

L. Expired PPAs of greater than six months duration, which expired two years before filing a Long Term Plan, will be made public unless the release would be inconsistent with the confidentiality provisions in the PPA.

This category should remain unchanged. Public release of this information sooner than the two-year period specified would produce ratepayer harm for the reasons discussed in Section II.F., above.

III. THE PACIFICORP PLAN

In Decision 04-01-050, the Commission describes the PacifiCorp Plan "as a possible model of transparency" and observes that the "extent of information made public in the

PacifiCorp Plan appears to exceed the guidelines on confidentiality adopted in the April 4 Ruling....^{8/} Certainly in terms of volume, the PacifiCorp Plan's 412 pages of single-spaced text and graphs are impressive. PG&E understands, however, that the Plan is the result of at least a year of effort. Given the schedule contemplated in this proceeding, California utilities cannot reasonably be expected to produce a plan of similar magnitude.

The constraints the schedule in this proceeding impose, however, do not deprive interested parties of access to information about California utilities analogous to much of the information PacifiCorp includes in its Plan. For example, in Chapter 2 of its Plan, PacifiCorp provides a general description of its service territory, supply resources (with references to Appendix C, Tables C.14 and C.15), wholesale sales and purchases (with references to Appendix C, Tables C.1, C.2 and C.3) and transmission-related information. In its FERC Form 1 filings, PG&E provides similarly detailed generation information, including annual production in kWh, fixed and variable costs, full load heat rates, date of first commercial operation and licensing and the like.

As to the extent to which the PacifiCorp Plan contains information that the Ruling would keep confidential, PG&E does not believe there are significant disparities between the information in the PacifiCorp Plan and that which the utilities would need to make public pursuant to the Ruling's framework. The differences are attributable primarily to the fact that California utilities must rely on the market to fill their net open positions to a much greater extent than PacifiCorp must.

PacifiCorp's service area covers portions of six states listed in order of highest to lowest retail load: Utah, Oregon, Wyoming, Washington, Idaho, and California. It comprises two control areas that are transmission constrained between East and West. Although large by geographic standards and subject to the jurisdiction of five public utilities commissions, in terms of retail load, PacifiCorp is smaller than PG&E and Southern California Edison Company. PG&E, in contrast, is part of a single control area operated by the ISO. PG&E's service territory

^{8/} Decision 04-01-050, mimeo p. 174.

is all in northern and central California, and PG&E is subject to the jurisdiction of this Commission. These differences in service territory and regulatory jurisdiction highlight an important difference in the two companies.

The PacifiCorp's Plan provides detailed supply and demand information only on a system basis, including some delineation between East and West; therefore, with respect to each individual service territory in a given state, PacifiCorp's Plan is not as forthcoming with public information as it may appear. Were PG&E to provide similar information for its service territory, the disclosure would be harmful because suppliers would have better intelligence on a large, concentrated portion of the market and be able to use the information to price their products.

PacifiCorp's utility-owned generation produces 72 percent of its energy needs. Moreover, in a recent news release, PacifiCorp announced its intention to build a 525 MW powerplant in Utah, thereby further reducing its need to contract with suppliers to serve its customers. PG&E by contrast is able to supply only 43 percent of its energy requirements using its utility-retained generation. In addition, PG&E serves a substantial portion of its load using energy from QFs and from the contracts the Commission allocated to it from DWR. With the QF contracts, PG&E must hedge the natural gas price risk inherent in the SRAC energy price; with the DWR contracts, some are dispatchable and also subject to natural gas price risk. PacifiCorp does not have a direct analogue to this form of natural gas price risk.

PacifiCorp uses coal as a fuel source in 77 percent of its utility-owned power plants and therefore is much less reliant on natural gas as a fuel source than California utilities are. Given the volatility in the natural gas commodity market and recent evidence that some natural gas suppliers may resort to sharp practices in marketing their product, there is a greater need to keep gas-related market sensitive information confidential in California than in PacifiCorp's service territory.

PacifiCorp concludes in its Plan that construction of significant new physical capacity is necessary for it to reliably serve load and meet reserve requirements in its service territory. The

Plan demonstrates a sense of urgency in bringing new capacity to the market. Such new capacity would necessarily be a cost-based investment, either by PacifiCorp or a third party.

In PG&E's case after implementation of additional energy efficiency and DSM programs, as well as purchase of power from renewable and QF suppliers, PG&E's remaining net open position for the next five years will likely be supplied for the most part with power purchased from the market. Market prices for power, unlike generation capacity, are not necessarily cost-based, but are a function of supply and demand and are more volatile in the near term based on factors such as the amount of power available from hydroelectric generation, the number of major forced outages of power plants and transmission lines, unusually hot weather for extended periods of time and the like. Because of its need for purchased power during this period, in contrast to new generation capacity, PG&E is more sensitive to market forces and must necessarily keep more information confidential than PacifiCorp does. To the extent the PacifiCorp Plan makes public information beyond the bounds of the Ruling's confidentiality protections, California's ratepayers would be harmed by release of the same information coming from a single utility operating in just one jurisdiction for the same reasons discussed in Section II, above.

IV. PRODUCT, PRICE, AND AVAILABILITY INFORMATION IN UTILITY PROCUREMENT-RELATED APPLICATIONS.

PG&E understands the reference to "product, price, and availability" in Decision 04-01-050 to refer to transactions for products such as capacity or energy.^{9/} Although the "price" seems clear, what was intended by "availability" is not. It could refer to the nature of the commitment (e.g., firm rather than as-available) or the term of the commitment or seasonality (e.g., 98 percent in the summer and 92 percent in the winter) or all of the above. In any case, for many, if not all, of the reasons already discussed above, ratepayers would suffer financial harm if the Commission were to make public the foregoing information any sooner than two years after a given transaction or power purchase agreement expires.^{10/}

^{9/} D.04-01-050, mimeo pp. 175-176.

^{10/} A "procurement-related application" as referenced in Decision 04-01-050 would be subject to the confidentiality mandate of Section 454.5(g).

As an initial matter, for proposed PPAs, suppliers would object to making the information public because it exposes to some extent their open position especially if the proposed transaction is not executed.^{11/} Particularly for capacity based products, such as dispatchable physical generation or tolling agreements, the market would see that a particular supplier was prepared to sell a certain quantity of product at a certain price. If that sale was not executed, the market would then know that this particular supplier has a remaining long position and that this supplier would be a seller in the shorter-term markets. Such a scenario could actually lead to lower prices in the shorter-term markets because of the greater selling pressure – a scenario suppliers wish to avoid. (Shandalov Declaration, ¶ 19.)

From the utility's perspective, if the utility still has short position after making public the terms of proposed or recently executed PPAs, then future solicitations may lead to higher-priced offers. Presumably, the utility in its initial solicitation would have attempted to buy most, if not all, of the lowest-cost products that fit its portfolio needs. To the extent the utility needs to conduct a further solicitation for additional, similar supplies, however, suppliers would have no incentive to offer pricing lower than what the utility has already paid (i.e., if the need still exists, prices would necessarily be equal to or higher than in the initial solicitation). Therefore, by making the information publicly available, ratepayers would be exposed to higher procurement costs. The more information that is made available, the more market intelligence suppliers have. If the information is not made public immediately upon proposal or execution, future solicitations will yield the most competitive prices. Therefore, the Commission should permit a confidentiality period of two years after a PPA has expired.

Aside from product, price, and availability terms, if a supplier knows who its competition is, this market intelligence can affect its offer in response to a solicitation. For example, if Supplier 1 knows that Supplier 2, who has a certain amount of generating capacity, has already consummated capacity transactions with a particular utility, then Supplier 1 knows that in future

^{11/} To the extent suppliers submit to utilities market sensitive information related to the utilities' procurement plans, Section 454.5(g) requires the Commission to keep such information confidential. The statute does not restrict the confidentiality protection to utility-generated information.

solicitations, there will likely be less competition from Supplier 2 for the sale of a capacity product. Supplier 1 may then attempt to obtain a higher price depending on the perceived ability to consummate the transaction at the higher price. (Shandalov Declaration, ¶ 19.)

With respect to applications for utility projects, potential suppliers certainly want to know the prices a utility is prepared to pay for new capacity. To the extent there is a competitive solicitation for new capacity, it may be unrealistic to think that the full contract would not eventually have to be disclosed publicly (such as upon execution), but, as with a PPA, a supplier will not want the terms disclosed, except to a select group of non-market participants, during the proposal and evaluation phase at the Commission. (Shandalov Declaration, ¶ 20.)

Seeing all the details of a completed transaction might set a floor for future projects. Alternatively, public release of these details could lead to future offers that approximate the amount that has been publicly disclosed even though, in absence of this market intelligence, the utility might obtain a lower price. Either of these outcomes harms ratepayers by imposing higher costs.

V. INFORMATION PROVIDED IN UTILITY QUARTERLY PROCUREMENT TRANSACTION COMPLIANCE FILINGS

Currently, PG&E requests confidentiality protection for its quarterly procurement compliance filings using the Ruling's confidentiality framework. Ratepayers would suffer financial harm by release of information beyond the protections, as modified, discussed in Section II, above, for the same reasons enumerated in that section.

In addition, if the exact details (product, price, quantities) of the bilateral transactions as well as ISO purchase and sale transactions were made public upon filing of the quarterly transaction reports, suppliers could use that information to determine more exactly the utilities' net open positions on a monthly basis. With this knowledge of actual quantities and prices utilities are paying for natural gas and electricity, suppliers might also be able to determine the dispatch of the utilities' DWR contracts. Knowing how the utilities supply their net open position in a given month or quarter enables suppliers to predict much more precisely the utilities' needs in similar quarters in future years. To do this, suppliers would first evaluate the

magnitude of transactions for the past quarter. Then suppliers would adjust for load growth, adjust for expiration of DWR contracts, adjust for stated energy efficiency and DSM goals, adjust for procurement of renewable energy in compliance with the RPS, and be able to make a forecast of the utilities' net open position for the same quarter of the following year. (Shandalov Declaration, ¶ 21.)

Given the long lead-time required for new capacity to enter the market, if the net open positions become large enough, suppliers could attempt to obtain higher prices for existing capacity and energy in the near term. Assuming that the utilities' net open positions increase over time, thereby increasing their reliance on contracts from the market, the utilities would be commensurately less able to secure lower prices for ratepayers because suppliers know the extent and trend of the increase of the utilities' net short position. (Id.)

VI. CONCLUSION

For all the foregoing reasons, the Commission should not alter the Ruling's confidentiality framework beyond the suggested changes PG&E discusses above.

Respectfully submitted,

WILLIAM V. MANHEIM
CHRISTOPHER J. WARNER
JOHN W. BOGY
EDWARD V. KURZ

By:


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March 1, 2004

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**

Order Instituting Rulemaking to Establish
Policies and Cost Recovery Mechanisms for
Generation Procurement and Renewable
Resource Development.

Rulemaking 01-10-024
(Filed October 25, 2001)

**DECLARATION OF
JAMES D. SHANDALOV**

I, James D. Shandalov, declare:

1. I am currently an independent consultant specializing in commercial and regulatory issues in the Western energy markets. At the request of Pacific Gas and Electric Company (PG&E), I am making this declaration to explain how suppliers of electricity to the California energy market gather market intelligence as part of their efforts to sell their products at the optimal prices for their firms. In particular, I will discuss certain categories of information that are currently kept confidential in accordance with an April 4, 2003 Assigned Commissioner's Ruling (Ruling) in the above-captioned docket as well as the proposal to make public all product, price and availability information in a utility's procurement-related applications. I will also comment on the confidentiality of information contained in the utilities' quarterly transaction reports. I will explain how suppliers could make use of such market sensitive information to obtain prices higher than they may have been able to obtain if the suppliers did not have access to this market sensitive information. The suppliers' possession of this market sensitive information could result in ratepayer harm in the form of higher procurement costs. In this market, as in any other rational market, sellers seek to obtain the highest possible prices for their products, and buyers seek the lowest possible prices.

2. I have 16 years of experience in the energy industry, including 10 years in the regulated utility business and 6 years in the merchant energy sector. My merchant experience includes trading, origination, and development. Prior to my current employment, I held the position of Director for Mirant Americas Energy Marketing LP until November 2003. In that

position, my responsibilities included originating long-term supply contracts to California wholesale customers, including public utilities, municipalities, and load aggregators. I have also held positions at Southern Company and Georgia Power Company. A copy of my resume is attached to this declaration. My background and experience give me knowledge of how suppliers could make use of market sensitive information and other market intelligence to obtain the highest possible prices for their products. I am by no means suggesting that the behavior of marketers and suppliers I describe in this declaration is unethical. The attempt to collect as much information about the market as possible, in a perfectly legal manner, is simply rational behavior on the part of participants in a competitive market.

3. Suppliers develop their view of the market from a variety of information sources. The more information they can obtain, the more refined their market view. This market view determines asset hedging activities, asset development and retirement strategies, and speculative trading strategies. While suppliers take some information at face value and use it to make short-term trading decisions, suppliers also gather other information and further model it to gain a longer-term perspective on the market. The information suppliers seek includes forward curves, loads, the magnitude of competitors' and customers' open positions, the status of capacity additions and retirements, status of major transmission projects, major policy issues that drive resource decisions, short and long-term weather forecasts and trends, the outlook for hydro production relative to snowpack and fish programs, generator outages, transmission maintenance, transaction data, and the like. The sources for such information include documents on file with this Commission, Western Electricity Coordinating Council (WECC) studies and assessments, California Energy Commission (CEC) studies and plant licensing/construction status reports, California Independent System Operator (CA ISO) seasonal assessments and market design proceedings, legislative actions, Federal Energy Regulatory Energy Commission (FERC) filings (Reliability Must-Run (RMR), Electronic Quarterly Reports (EQR)), company annual reports, trade publications and news services, transactions with customers, and the like.

4. Suppliers have access to a great deal of information regarding the markets. Because the California utilities are so dependent on the markets to cover their net open position, particularly as the net open positions increase over time, those net open positions and the utilities' specific plans for covering is intelligence suppliers would find especially useful because suppliers could better anticipate the timing of buying activity. Suppliers could respond by either buying additional supplies or selling existing supplies less aggressively in anticipation of utility purchases.

5. Based on publicly available information, I understand that PG&E derives its electricity net open position by measuring the difference between its retail load obligation and the ability of its existing resource portfolio to meet that load obligation while also meeting state and regional capacity reserve requirements. For natural gas, the net open position consists of three components: (1) the fuel required to operate utility-retained generation, (2) hedging activities associated with managing Short Run Avoided Cost (SRAC) electricity price risk in Qualifying Facility (QF) contracts, and (3) hedging activities associated with managing electricity price risk in the Department of Water Resources (DWR) dispatchable contracts.

6. Based on publicly available information, I understand that when coupled with Commission policy directives on energy efficiency, Demand Side Management (DSM) programs, compliance with the California Renewable Portfolio Standard (RPS), new Distributed Generation (DG), and purchases from Qualifying Facilities, in addition to managing a substantial position in DWR-allocated contracts, PG&E's remaining energy and capacity needs for the next five years must be acquired through market contracts.

7. In the paragraphs that follow, I will discuss why I, as a marketer or supplier to utilities, would consider the information the Ruling protects as market sensitive information and how I or other market participants could use that information to obtain the optimal price for products from the utilities.

8. As a marketer, I would regard the utilities' own, internally developed assumptions of natural gas prices and on- and off-peak electricity prices as market sensitive

information because such data provides positive evidence about what the utilities actually think future prices will be. If I have definite knowledge as to what a utility thinks the prices in the future may be, then barring a major market move, I would have little incentive to offer the utilities a price below the prices the utility is predicting. On the other hand, if I did not have access to this market sensitive information, my market intelligence would be much less perfect, which might induce me to offer a lower price in order to secure the contract with the utility. By the same token, if I know that utilities are forecasting prices lower than what I am prepared to offer, I have an incentive to look elsewhere for a more favorable market for my products. Additionally, I may make sales in the more volatile shorter-term markets rather than longer-term forward markets. To the extent the utilities' lower forecast prices lead to a drop in forward market prices, this could inadvertently lead to the accelerated retirement of older generating capacity, which could result in ratepayer harm during a time of capacity shortage.

9. From a marketer's perspective, how a utility values avoided energy costs on an hourly basis is market sensitive information. I could use this knowledge in a period of high demand to price my products just below the utility's forecast cost. On the other hand, if the only intelligence I have in this area comes from aggregated data, it is more difficult to match my pricing with what the utility might be predicting because I do not know, specifically, the avoided cost in a given hour.

10. In California, the utilities are the largest buyers of capacity and energy in their respective service areas; the magnitude of resource needs can influence how a marketer will price its products. For example, I believe that PG&E, whose net open position begins to increase in 2006, will become even more sensitive to the market, as its market purchases become an ever-growing proportion of its resource portfolio. An increase in net open position from year to year will necessarily increase the amount of trading and contracting activity in the market. Suppliers are focused on profit maximization, so the more that they know about the exact net open position of a utility and its plans to cover that position, the greater the potential that the market will inadvertently bid up prices, either through additional buying or less aggressive selling, in

anticipation of buying activity by the utilities. If I, as a marketer, know either the exact amount of PG&E's net open position or PG&E's detailed plan and timing to cover that position, I could attempt to use this market sensitive information to obtain higher prices as the net open position increases and older capacity retires.

11. As a marketer, I would consider a utility's fuel hedging plan for managing electricity price risk in QF and DWR dispatchable contracts as market sensitive information. The quantity and timing of the hedges have the potential to affect market prices. To the extent suppliers know such details, there is the potential of harm to ratepayers resulting from an inadvertent bidding up of market prices for natural gas, either through additional buying or less aggressive selling, in anticipation of large transaction activity by the utility. Additionally, with respect to DWR contract hedging, not only would a disclosure of the short position signal how much gas the utility would need to hedge, but it would also indicate the capacity factor at which the utility is planning to dispatch the DWR contracts at the contract heat rate. This disclosure would further indicate the utility's view of the gas and power markets, including how much more or less energy the utility would need to buy in the market, and potentially influence bidding behavior of market participants.

12. As a marketer, I would not benefit much from the possession of a utility's annualized energy mix by percentage. On the other hand, I would consider such data for monthly periods somewhat more useful, market sensitive information because it would make it less difficult to determine a utility's marginal costs at different times of the year. For example, monthly forecast information would show seasonal trends in a utility's own energy production as well as the proportion of energy to be purchased from the market. For the summer in particular, I could better determine the magnitude of the utility's market purchases and compare it with my own view of the market. Given this type of information, the market could inadvertently bid up prices, either through additional buying or less aggressive selling, in anticipation of significant utility purchases from the market, compared to prior periods.

13. Peak day resource needs is an important piece of market intelligence. Ideally I would want access to all such market sensitive information, but even if access to such information were subject to confidentiality for the first three years' data as PG&E has proposed, I could still use the peak day forecast data for the fourth year along with actual peak load data for prior years, as filed in a utility's FERC Form 1, to interpolate the peak day needs for the years in between, including the current year.

14. Concerning a utility's energy mix disaggregated by periods shorter than a year, if I had access to that information, which PG&E proposes to keep confidential, I could use that market sensitive information to calculate from month to month or year to year actual adjustments to a utility's resource portfolio; I'd then be able to determine more accurately the utility's incremental needs from the market. With this type of information the market might inadvertently bid up prices, either through additional buying or less aggressive selling, in anticipation of significant market purchases by the utility, as compared with prior periods.

15. As a marketer, I would consider disaggregated data for a utility's DWR dispatchable power contracts and "new world" Power Purchase Agreements (PPAs) market sensitive information. If I know exactly how much energy a utility expects to receive pursuant to the dispatchable contracts, I can pinpoint much more exactly how much the utility will need to buy from the market and adjust my prices accordingly.

16. From a marketer's perspective access to the PPAs a utility has would be extremely valuable market intelligence. Such market sensitive information would provide insight into a utility's risk management approach. This information would give me a better sense of which products a utility has procured to cover its net open position. The products could be standard, on-peak 16-hour blocks of energy, or 4- to 8-hour super-peak delivery profiles, or dispatchable energy and capacity, or call options (with fixed or indexed strike prices), and the like. I would attempt to stack these products on top of the utility's other resources to determine from a capacity perspective the extent to which a utility has covered its net open position and how much will be left to cover in the more volatile, shorter term markets. Knowledge of the

terms and conditions of PPAs in effect would also enable me to see which other suppliers already have agreements in place and on what terms, which would enable me to test how much more the utility may be willing to pay for similar products in future solicitations by offering such products at higher prices. I would also gain intelligence on the open positions of other suppliers, specifically with respect to how much less long or how much more short a position another supplier now has as a result of contracting with a utility. If a utility's current PPAs are made public I believe this market sensitive information would weaken a utility's negotiating power with respect to both price and contract terms for future transactions. I would use this information as evidence that a utility has been willing to agree to certain price and contract terms. Possession of such information would make me more reluctant to agree on terms and conditions more favorable to the utility in my negotiations with that utility. Furthermore, if the utility is in the market to procure more of a similar product or products, there will be less supply than in the previous solicitation and this may give me an opportunity to obtain higher prices and less flexible contract terms because I know the utility is still short and must cover its open position.

17. Information concerning a utility's energy sales forecasts to the wholesale market disaggregated by month or delivery period is valuable, market sensitive information because such information has the potential to identify more clearly when utilities' net open position is greatest, allowing suppliers to inadvertently bid up prices, either through additional buying or less aggressive selling, in anticipation of significant utility purchases from the market, compared to prior periods. However, such information, if aggregated on an annual basis, is much less useful.

18. As a marketer, I would regard a utility's past fuel buying and hedging information to be market sensitive because possession of such information would enable me to determine better how a utility has hedged its natural gas price risk for the QF contracts and dispatchable DWR contracts. Based on public information the ISO publishes within 45 days after the end of a calendar year regarding annual energy production at the utilities' RMR facilities, I could "reverse engineer" the amount of gas utilities bought for hedging the QF and DWR contracts on an annual basis if the confidentiality provision for fuel buying and hedging was shorter than two years. The

older and more “stale” this information is, the less valuable it becomes to a marketer because enough factors will have changed over time to make the information less useful on a going-forward basis.

19. PG&E has also asked me to comment on the Commission’s proposal to make public all product, price and availability information in a utility’s procurement-related applications. As a marketer I would object to making the information public because it exposes to some extent my own open position particularly if the proposed transaction is not executed. Particularly for capacity-based products, such as dispatchable physical generation or tolling agreements, my competitors would see that I was prepared to transact a certain quantity of product at a certain price. If that transaction was not executed, my competitors would then know that I have a remaining long position and that I will be a seller in the shorter-term markets. Such a scenario could actually lead to lower prices in the shorter-term markets because of the greater selling pressure, which is a situation I as a marketer would wish to avoid. Thus this information is market sensitive from a supplier’s perspective. From the utility’s perspective, if the utility still has short position after making public the terms of proposed or recently executed PPAs, then in future solicitations I would regard this as an opportunity to obtain higher prices. Presumably, the utility in its initial solicitation would have attempted to buy most, if not all, of the lowest-cost products that fit its portfolio needs. To the extent the utility needs to conduct a further solicitation for additional, similar supplies, however, I would have little incentive to offer pricing lower than what the utility has already paid. Aside from product, price, and availability terms, if I know who my competition is, this market intelligence can affect how I formulate my offer in response to a solicitation. For example, if I know that my competitor, who has a certain amount of generating capacity, has already consummated capacity transactions with a particular utility, then I know that in future solicitations, there will likely be less capacity available from that competitor. I would see this an opportunity to attempt to obtain a higher price depending on whether I thought I might get a contract at the higher price, based on other market intelligence I may have.

20. With respect to applications for utility projects, potential suppliers certainly want to know the prices a utility is prepared to pay for new capacity. This too is market sensitive information. To the extent there is a competitive solicitation for new capacity, it may be unrealistic to think that the full contract would not eventually have to be disclosed publicly (such as upon execution), but, as with a PPA, as a supplier I would not want the terms disclosed, except to a select group of non-market participants, during the proposal and evaluation phase at the Commission.

21. Finally, with respect to information the utilities now provide in their quarterly transaction reports, I would find all such information very valuable market intelligence of a market sensitive nature. If the exact details (product, price, quantities) of the bilateral transactions, as well as ISO purchase and sale transactions, were made available to me upon filing of the quarterly transaction reports, I could use that information to determine more exactly the utilities' net open positions on a monthly basis. With this knowledge of actual quantities and prices utilities are paying for natural gas and electricity, I might also be able to determine the dispatch of the utilities' DWR contracts. Knowing how the utilities supply their net open position in a given month or quarter would enable me to predict much more precisely the utilities' needs in similar quarters in future years. To do this, I would first evaluate the magnitude of transactions for the past quarter. Then I would adjust for load growth, adjust for expiration of DWR contracts, adjust for stated energy efficiency and DSM goals, adjust for procurement of renewable energy in compliance with the RPS, and be able to make a forecast of the utilities' net open position for the same quarter of the following year. Given the long lead-time required for new capacity to enter the market, if I anticipated significant buying activity by the utilities, I would have an incentive to attempt to obtain higher prices for existing capacity and energy in the near term. Assuming that the utilities' net open positions increase over time, thereby increasing their reliance on contracts from the market, I would assume utilities would be commensurately less able to secure lower prices for ratepayers because the market would know the extent and trend of the increase of the utilities' net short position.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on MARCH 1ST 2004, at Danville, California.


JAMES D. SHANDALOV

James D. (Jim) Shandalov

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PROFILE

Offering a 16-year history of proven performance in origination of energy supply contracts, generation development, asset optimization, power trading, asset acquisition, energy policy, project management, and technical design. Strengths include: breadth of experience, commercial sense, contract negotiation, and communication skills.

PROFESSIONAL EXPERIENCE

MIRANT CORPORATION, Walnut Creek, CA

2000-2003

Director, Marketing and Development (2001-2003)

Project Director (2000-2001)

- Originated long term supply contracts to California wholesale customers – public utilities, municipalities, and load aggregators. Successfully closed sales transactions under difficult credit environment leading up to Chapter 11 filing. Participated in negotiations on tolling agreement as seller. Involved in settlement discussions with state, FERC, and customers regarding litigation related to California energy crisis. Active in state regulatory and legislative issues pertaining to energy policy, including utility procurement, direct access, and renewable energy. Familiar with Reliability Must-Run contracts with California ISO.
- Directed marketing and development team for origination of power, gas, and emissions credits deals, as well as new generation development in California. Successfully closed sales transactions in each commodity. Negotiated tolling deal as buyer. Delivered presentations at two energy conferences.
- Developed sites for natural gas fired combined cycle projects in California. Directed multi-disciplinary due diligence teams, prepared bids, and negotiated purchase of potential acquisitions; targets included companies, assets, development projects, and energy supply contracts. Team members included technical, environmental, legal, finance, trading, and structuring.

SOUTHERN COMPANY ENERGY MARKETING, LP, Atlanta, GA

1998-2000

Southern Energy, Inc. and its subsidiaries were spun off as Mirant Corporation in September 2000

Manager, Power Logistics (1999-2000)

Manager, Transmission (1998-1999)

Hourly Trader (1998)

- Managed hourly trading, pre-scheduling, and real time power operations in WECC and supervised support team. Assisted in asset optimization of Mirant's 3000 MW Bay Area portfolio. Traded hourly power in California and WECC markets. Established and hedged positions in Firm Transmission Rights. Developed new relationships and physical positions that led to valuable opportunities.
- Managed East Transmission Desk and support team. Responsible for physical transmission of power on daily basis and for forward hedging with transmission in PJM and Midwest markets. Helped traders to complete deals involving transmission. Provided guidance and training to team.
- Traded hourly power in East Region. Helped establish Southern Energy as an active market participant. Made transmission reservations on OASIS and created energy tags for hourly deals. Handled and resolved real time problems with prescheduled power.

SOUTHERN COMPANY SERVICES, INC., Birmingham, AL and Atlanta, GA

1996-1998

Project Engineer

- Selected to first class of Pipeline Leadership Development Program to do 4 job rotations at Southern Company subsidiaries. Completed courses in Emerging Competitive Energy Markets, Financial Analysis, Electric Utility Cost Structure, and Strategic Negotiations.
- **Southern Company Energy Marketing** - Coordinated load forecasts, power schedules, and financial settlements in SCEM's participation in the Pennsylvania Retail Pilot. Scheduled power in PJM.
- **Southern Company Services' Financial Planning and Analysis** - Assisted with developing criteria for investment in generation and distribution assets. Analyzed Georgia Power's freight logistics program.
- **Southern Development and Investment Group's Energy Services** - Performed financial modeling and risk analysis. Key part of due diligence team for a proposed energy services company acquisition.
- **Southern Company Services' Transmission Planning and Operations** - Implemented FERC Orders 888 and 889. Assisted in designing rates for transmission and ancillary services, and in the related FERC filings. Developed financial models to measure cost shifting between the operating companies.

GEORGIA POWER COMPANY (SOUTHERN COMPANY), Atlanta, GA

1987-1996

Project Engineer (1993-1996)

Design Engineer (1991-1993)

Cooperative Education Program (1987-1991)

- Assisted project manager in managing multiple capital transmission line and substation projects. Functional areas included land acquisition, procurement, engineering, environmental, construction, and commissioning. Developed project strategies and coordinated schedules and budgets. Completed job rotation in Transmission Construction. Served as Chairman of Georgia Power Engineering Association. Completed Leadership Development program.
- Prepared cost estimates and performed engineering design for electric substation projects. Designed physical portion of Georgia Power's first "Southern Company standard" substation.
- Worked alternate quarters while earning undergraduate degree in college. Completed 5 quarters in Substation Design and 2 quarters in the Research Center.

EDUCATION

Master of Business Administration, Georgia State University, Atlanta, Georgia, 1995

Bachelor of Electrical Engineering, Georgia Institute of Technology, Atlanta, Georgia, 1991

PROOF OF SERVICE BY MAIL

I, the undersigned, state that I am a citizen of the United States and employed in the City and County of San Francisco; I am over the age of eighteen (18) years and not a party to the within cause; and that my business address is Pacific Gas and Electric Company, 77 Beale Street, San Francisco, California 94105.

I am readily familiar with the business practice of Pacific Gas and Electric Company for collection and processing of correspondence for mailing with the United States Postal Service. In the ordinary course of business, correspondence is deposited with the United States Postal Service the same day it is submitted for mailing.

On March 1, 2004, I caused to be served a true copy of:

COMMENTS OF PACIFIC GAS AND ELECTRIC COMPANY (U 39 E) ON CONFIDENTIALITY ISSUES

by placing it for collection and mailing, in the course of ordinary business practice, with other correspondence of Pacific Gas and Electric Company, on March 1, 2004, enclosed in a sealed envelope, with postage fully prepaid, addressed to:

All Parties in Rulemaking 01-10-024

In addition, an electronic version of the above-referenced Comments was transmitted to all parties providing an e-mail address in Rulemaking 01-10-024.

I certify and declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on March 1, 2004.


STEPHANIE LOUIE